

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

REX CARVER,)
)
Plaintiff,)
)
v.) **No. 3:19-cv-00191**
)
BETSY DEVOS in her official capacity)
as Secretary of the U.S. Department of)
Education and UNITED STATES)
DEPARTMENT OF EDUCATION,)
)
Defendants.)

ORDER

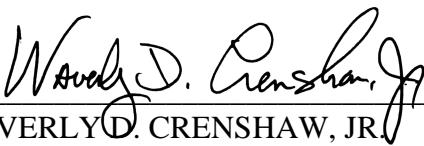
On July 22, 2020, the Magistrate Judge issued a Report and Recommendation (“R&R”) (Doc. No. 35) recommending that Defendants’ Motion to Dismiss (Doc. No. 22) be granted in part and denied in part. Neither party filed timely objections to the R&R.

Having thoroughly reviewed the R&R, the Court agrees with the Magistrate Judge’s analysis. Specifically, the Court agrees that it should dismiss as unopposed Carver’s claims based on denial letters one through six and nine. (Doc. No. 35 at 6.) The Court also agrees that it should not dismiss Carver’s claims based on denial letters seven and eight at this stage, particularly because the Court has an obligation to examine the administrative record involving those claims, Motor Vehicle Mfrs.’ Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983), and that obligation “is not properly fulfilled in the Rule 12(b)(6) context *in this case*,” Tomlin v. Laborers Pension Tr. Fund, No. 05-60242, 2006 WL 8460018, at *1 (E.D. Mich. Feb. 16, 2006). As the Magistrate Judge has suggested, it would be more appropriate for the Court to consider those claims on a motion for summary judgment or a motion for judgment on the full administrative record, after a complete record has been filed with the Court. (Doc. No. 35 at 8.)

Accordingly, the Magistrate Judge's R&R (Doc. No. 35) is **APPROVED AND ADOPTED**, and Defendants' Motion to Dismiss (Doc. No. 22) is **GRANTED IN PART** and **DENIED IN PART**. Defendants' motion to dismiss Carver's claims based on denial letters one through six and nine is granted as unopposed, and those claims are dismissed. To the extent Defendants' Motion seeks to dismiss Carver's claims based on denial letters seven and eight, that request is denied without prejudice to the parties raising their respective arguments in motions for judgment on the administrative record or for summary judgment.

This case is returned to the Magistrate Judge for further case management.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE